

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49938 of 2016

Arising Out of PS.Case No. -20 Year- 2014 Thana -BHAGALPUR KOTWALI District-
BHAGALPUR

- =====
1. Anamika Sharma w/o Ram Naresh Singh, r/o S.K. Tarafdar Road, Adampur, P.S. – Adampur, District – Bhagalpur
 2. Ram Naresh Singh, s/o Sant Singh, r/o S.K. Tarafdar Road, Adampur, P.S. – Adampur, District – Bhagalpur
 3. Suresh Chaudhary, s/o Late Chulhai Chaudhary, r/o Purab Tola, Kahalgawn, P.S. – Kahalgawn, District – Bhagalpur
 4. Benedik Marandi s/o Late Pyare Lal Marandi, r/v- Baccha, P.S. – Mirja Chawki, District – Sahebganj
 5. Binay Kumar, s/o Rashik Lal Mandal, r/o Radha Rani Sinha Road, Adampur, P.S. – Adampur, District – Bhagalpur
 6. Anoj Kumar Singh @ Anuj Kumar s/o Late Prahlad Prasad Singh, r/v + P.O. – Tetri, via – Naugachhiya, P.s. – Naugachhiya, District _ Bhagalpur
 7. Angesh Kumar @ Agnish Kumar s/o Ram Chandra Rai, r/v + P.O. – Pipra Dewas, via – Barauni, P.s. – Barauni, District – Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
2. Ravindra Kumar s/o Bhagirath Prasad Kunwar, r/o Radha Rani Sinha Road, P.s. – Adampur, District – Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Sr. Adv.
For the Opposite Party/s : Mrs. Rita Verma, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 20-03-2017

Heard Mr. P.K. Shahi learned senior counsel for the
petitioners and the learned A.P.P.

The petitioners filed this petition for quashing of the
order dated 30.05.2016 passed in Kotwali P.S. Case No. 20/2014 by
which the learned Chief Judicial Magistrate, Bhagalpur took
cognizance under Sections 419, 420, 468, 471, 406, 409, 506 of the
Indian Penal Code against the petitioners.



The facts which are relevant and admitted for disposal of this petition are that the informant Ravindra Kumar gave his fardbeyan on 04.06.2012 before the S.H.O. Adampur P.S. Bhagalpur. The informant alleged that he is a registered contractor of Public Health Engineering Department. Misusing his letter-pad Anoj Kumar get an account no. 13501129 opened and he withdrew Rs. 8,62,549/- along with Vinay Kumar in collusion with the officials of the Head Post-Office Bhagalpur, on the basis of which Kotwali Adampur P.S. Case No. 309/2012 was registered and the same is still under investigation. Thereafter, the informant Ravindra Kumar filed Complaint Case No. 2363/2013 on 19.11.2013. Learned Chief Judicial Magistrate, Bhagalpur vide order dated 08.01.2014 sent the same for institution and investigation. The police registered Kotwali P.S. Case No. 20/2014 and after investigation submitted final form finding the case false against the petitioners, but the learned Chief Judicial Magistrate, Bhagalpur differing with the findings of the Investigating Officer took cognizance under Sections 419, 420, 468, 471, 406, 409 and 506 of the Indian Penal Code.

Mr. P.K. Shahi learned senior counsel for the petitioners assails the order aforesaid on the ground that the informant in sum and substance, made the same allegation in his fardbeyan on the basis of which Kotwali (Adampur) P.S. Case No. 309/2012 was registered on



05.06.2012, but only after three months, the informant filed Complaint Case No. 2363/2013. The proceeding of the aforesaid complaint case should not have proceeded further in view of the fact that on same and similar facts, the police is investigating Kotwali (Adampur) P.S. Case No. 309/2012.

The sole question arises for consideration as to whether the second case should be or should not be allowed to proceed further?

Section 210 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') says as follows:-

“210- Procedure to be followed when there is a complaint case and police investigation in respect of the same offence – (1.) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2.) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3.) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

From plain reading of the provision as contained in Sub-



section (1.) it appears that with respect to the same incident if the police case is pending, the complaint case filed by the informant should not have been allowed to continue and further proceeding in the complaint case should have been stayed, but this fact has not been brought to the notice of the Chief Judicial Magistrate, Bhagalpur at the time of sending the complaint case to the police station for institution and investigation nor at the time of taking cognizance or even after taking cognizance. According to the **sub-section 1 of Section 210**, the proceeding in such case can be stayed either at the enquiry stage or even at the trial, but the petitioner did not file any petition before the Court in seisin of the case. Therefore, I find it proper to dispose of this quashing petition with a direction to the court below to pass appropriate order within one month from the date of filing such petition by the petitioners under Section 210 of the Cr. P.C.

Accordingly, this quashing petition is disposed of.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.03.2017
Transmission Date	31.03.2017

